STATE OF MICHIGAN

COURT OF APPEALS

ROCHESTER HILLS PUBLIC LIBRARY,

Plaintiff-Appellant,

v

CITY OF ROCHESTER HILLS,

Defendant-Appellee.

UNPUBLISHED
October 3, 1997

No. 196077
Michigan Tax Tribunal
LC No. 00215037

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff Rochester Hills Public Library appeals by right from the opinion and judgment of the Michigan Tax Tribunal rejecting the decision of the small claims division and holding that plaintiff was not entitled to claim an exemption under either MCL 211.7m or 211.7n; MSA 7.7(4j) or 7.7(4k) of the General Property Tax Act for tax years 1994 and 1995. We affirm.

Plaintiff purchased the land in question in 1988 for the purpose of building a new main library. The property is vacant and consists of 9.6 acres. The plans for the library building were approved by the planning commission in 1990, but before the plans could be scheduled for review by the Rochester Hills City Council, the council passed a wetlands ordinance prohibiting any improvements from being built within forty feet of a wetland area. The previous ordinance imposed a twenty-five foot ban. Plaintiff claimed this change blocked ingress and egress from the property. As a result, the proposed library was built on another piece of property located approximately one mile south of the property at issue. In 1994, defendant City of Rochester Hills placed the subject property on the tax rolls for the first time since its purchase in 1988.

Plaintiff appealed the assessments for 1994 and 1995 to the small claims division of the Michigan Tax Tribunal, arguing that the property was exempt from taxation under MCL 211.7m; MSA 7.7(4j), which exempts property owned or being acquired by a public entity where the property is used for a public purpose. Plaintiff claimed that holding the property for future use or liquidation was within the definition of public purpose. The hearing referee found that the applicable statute was MCL 211.7n; MSA 7.7(4k), not § 7m. Section 7n specifically exempts from taxation property that is "owned and

occupied" by, among other things, nonprofit library institutions. The hearing referee found that plaintiff's property was exempt from taxation for the years at issue because, during the relevant time, the property was owned by plaintiff and was "being solely occupied by Petitioner, although still vacant, because the Petitioner alone [has the power to determine] . . . the use to which the subject lot shall be put." On rehearing, the tax tribunal vacated the judgment of the hearing referee and found that the property was not exempt under either §§ 7m or 7n because plaintiff did not use the property for a public purpose or occupy the property during the relevant tax period.

In general, tax exemption statutes must be strictly construed in favor of the taxing unit. *DeKoning v Dep't of Treasury*, 211 Mich App 359, 361-362; 536 NW2d 231 (1995). MCL 211.7m; MSA 7.7(4j) provides in relevant part that "property owned . . . or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity . . . whose members consist solely of a political subdivision . . . and [which] is used to carry out a public purpose . . . is exempt from taxation." The tax tribunal found that plaintiff "conceded at the hearing on this matter that the subject property is and was vacant and was not in any use, public or otherwise, during the tax years at issue." Plaintiff argues, as it did in the administrative proceedings, that holding the property for an unspecified future use constitutes use of the property for a public purpose.

Plaintiff's interpretation of § 7m is unacceptable because it would render the public use requirement meaningless. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992). Had the Legislature intended to provide a blanket exemption for all land owned by entities such as plaintiff, it clearly would have done so. However, it chose to exempt only that land "used to carry out a public purpose." In *Traverse City v East Bay Twp*, 190 Mich 327; 157 NW 85 (1916), our Supreme Court reached a similar result with regard to vacant land held for future use under the statutory predecessor to § 7m, which exempted from taxation "lands owned by any county, township, city, village or school district and buildings thereon, used for public purposes." *Id*. at 328. Plaintiff has not carried its burden of proof to demonstrate why a different result should obtain under revised § 7m, which contains virtually the same wording with regard to the exemption requirement. Consequently, we find that the tax tribunal did not err in holding that plaintiff was not entitled to an exemption under that statute.

MCL 211.7n; MSA 7.7(4k) provides an exemption for "[r]eal estate or personal property *owned and occupied* by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon *while occupied by them* solely for the purposes for which the institutions were incorporated." (Emphasis added). A claimant seeking an exemption under this provision must establish the following elements:

> (1) The real estate must be owned and occupied by the exemption claimant;
>
> (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
>
> (3) The claimant must have been incorporated under the laws of this state;

(4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. [*Ladies Literary Club v Grand Rapids*, 409 Mich 748, 751; 298 NW2d 422 (1980); *Ass'n of Little Friends, Inc v Escanaba*, 138 Mich App 302, 306; 360 NW2d 602 (1984).]

There is no dispute that plaintiff satisfies elements (2) and (3). However, the statute clearly requires occupation by the claimant. In this case, plaintiff has admitted that the property was vacant at all relevant times. According to Webster's dictionary, a synonym for "vacant" is "unoccupied." Webster's New Twentieth Century Unabridged Dictionary (2d ed), p 2014.

To hold, as the hearing referee did, that the owner's right to control the property is synonymous with occupation of the property would render nugatory the statutory language requiring that the property be occupied, as that term is commonly understood. See *Altman, supra* at 635; MCL 8.3a; MSA 2.212(1); *In re PSC's Determination Regarding Coin-Operated Telephones, No 2*, 204 Mich App 350, 353; 514 NW2d 775 (1994). Therefore, because plaintiff did not occupy the property during the tax years at issue, the tax tribunal did not err when it vacated the hearing referee's judgment and ruled that plaintiff was not entitled to claim an exemption under § 7n.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen